

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 375 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

GOKALBHAI JAKSHIBHAI RABARI

Appearance:

1. Criminal Appeal No. 375 of 1992
MR KT DAVE, APP, for the Appellant.
MR KS JHAVERI for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/06/2001

ORAL JUDGEMENT

1. This appeal arises out of judgment and order rendered by the learned Judicial Magistrate, First Class, Sidhpur, on January 31, 1992, in Criminal Case No.1455 of 1986, acquitting the present respondent (accused therein) of the charges punishable under Sections 420, 423 and 386 of Indian Penal Code.

2. The facts of the case, in a nutshell, are that a private complaint came to be lodged with learned Judicial Magistrate, First Class, Sidhpur, by one Kantibhai Kashiram Patel of village Chandalaj of Mehsana district against present respondent. The charges were that the complainant's wife-Kantaben was not keeping good health and, therefore, she was taken to the present respondent-Gokal Jaksi, who was engaged in witchcraft. He performed certain rituals whereafter the complainant's wife was cured. She was again taken to the respondent when he told the complainant that certain more ceremonies will have to be performed. While the ceremony was on, the respondent told the complainant that if he really wants his wife to be cured, he will have to part with the two fields which are owned by the family of the complainant. Thereafter, the condition of Kantaben deteriorated further. Complainant, therefore, agreed to transfer the said fields of land by a registered deed and, ultimately, the a sale deed was executed in favour of the respondent. The sale deed was registered with the Registrar, at Sidhpur and the stamp fee of Rs.1500/- and registration fee of Rs.125/- were also paid. Kantaben was keeping good health thereafter. But, subsequently, after a lapse of about three months, the problem again re-occurred. The complainant, therefore, felt that he has been cheated by the respondent herein.

2.1 The said complaint was sent by the learned Judicial Magistrate, First Class for investigation to the Police under Section 156(3) of the Code of Criminal Procedure and the police, after investigating into the offence, having found sufficient evidence against the accused, filed a charge sheet in the Court of learned Judicial Magistrate, First Class, Sidhpur and Criminal Case No.1455 of 1986 came to be registered. Charge at Ex.2 was framed against the accused for the offences punishable under Sections 420, 423 and 306 of Indian Penal Code. The accused-respondent pleaded not guilty to the charge and expressed his desire to face the trial. The prosecution led the evidence. The learned Magistrate, after considering the evidence led by the prosecution, came to a conclusion that the prosecution had failed to establish the charges against the accused and, he, therefore, acquitted the accused of the charges levelled against him. Aggrieved by the said judgment and order, the State has preferred this appeal.

3. Heard learned Additional Public Prosecutor, Mr. Dave, for the appellant-State and Mr. K.S. Zaveri, learned advocate for the respondent.

4. Learned Additional Public Prosecutor, Mr. Dave, has taken a number of contentions. The main contention being that the Trial Court has committed an error in giving undue weightage to the fact that Kantaben is not examined. He also contended that evidence of other witnesses has not been properly appreciated by the learned Magistrate. If the evidence as a whole is taken, the case can certainly be said to have been properly proved by the prosecution. The doubts that are raised by the Court below cannot be considered as reasonable doubts and ought to have been ignored. Minor contradictions are bound to creep in when the trial takes place after lapse of time. Mr. Dave, therefore, urged that the appeal may be allowed and the judgment and order impugned herein may be set aside and the respondent may be convicted for the offences with which he was charged.

5. Mr. K.S. Zaveri, learned advocate for the respondent, has opposed this appeal.

6. This Court is taken through the record and proceedings of the case. Mr. Dave has read over the depositions as well as judgment impugned herein.

7. It is an unfortunate situation where a person comes with a case that he has been duped by a person engaged in witchcraft. If the evidence is seen, in light of the provisions of law, it reflects that the case of the prosecution can hardly be said to have been proved.

8. First and foremost, it requires to be noted that the complainant approaches with a complaint at a belated stage. Second part is that, admittedly, the land is transferred to the respondent-accused under a registered sale deed. There is a specific covenant regarding price of the land and the consideration having been paid to the vendor and, in absence of any other contra indicative cogent material, it is difficult to accept the version of the complainant.

9. It is required to be noted that the whole case of the complainant is on that basis that his wife-Kantaben was not keeping good health and, therefore, she was taken to the witch-doctor. Upon his performing certain rituals, her health improved. Thereafter, the sale deed was executed and, thereafter, after some time, Kantaben's health again deteriorated. To prove all these aspects, Kantaben ought to have been examined, which has not been done. For whatever reasons, Kantaben is not placed in the witness box.

10. There also appears certain material contradictions in the deposition of the witnesses. These contradictions can be proved only through deposition of the Investigating Officer. The Investigating Officer has not been examined and is not offered for cross-examination to the defence. The defence is, therefore, deprived of its right of proving such contradictions and bringing them on record. Necessarily, it will have an adverse effect on the prosecution case.

11. Having gone through the judgment impugned herein, this Court is satisfied that all these aspects have been properly considered and dealt with by the learned Trial Magistrate. This court is in agreement with the reasonings adopted and conclusions arrived at by the learned Trial Magistrate and there is no reason for this Court to interfere with the impugned judgment and order recording acquittal of the accused. In view of the decision rendered by the Apex Court in State of Karnataka v. Hemareddy & Another, A.I.R. 1981 SC 1417 and Girijanandini Devi & Ors. v. Bijendra Narain Choudhary, A.I.R. 1967 S 1124, this Court does not deem it necessary to repeat the narration of evidence or to reiterate the reasons given by the Trial Court for acquitting the accused.

12. The learned Additional Public Prosecutor, Mr. Dave, could not point out any other error of law or error of fact good enough to persuade this Court to interfere with the order impugned herein. Appeal merits dismissal and the same is, therefore, dismissed. The judgment and order of acquittal recorded by the learned Trial Magistrate in Criminal Case No.1455 of 1986 dated the 31st January, 1992 is hereby confirmed.

[A.L. DAVE, J.]

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